

University of Montana

ScholarWorks at University of Montana

Graduate Student Theses, Dissertations, &
Professional Papers

Graduate School

1988

Open space acquisition techniques and management options for rural communities

Keith B. Fife

The University of Montana

Follow this and additional works at: <https://scholarworks.umt.edu/etd>

Let us know how access to this document benefits you.

Recommended Citation

Fife, Keith B., "Open space acquisition techniques and management options for rural communities" (1988). *Graduate Student Theses, Dissertations, & Professional Papers*. 3135.
<https://scholarworks.umt.edu/etd/3135>

This Thesis is brought to you for free and open access by the Graduate School at ScholarWorks at University of Montana. It has been accepted for inclusion in Graduate Student Theses, Dissertations, & Professional Papers by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

COPYRIGHT ACT OF 1976

THIS IS AN UNPUBLISHED MANUSCRIPT IN WHICH COPYRIGHT
SUBSISTS. ANY FURTHER REPRINTING OF ITS CONTENTS MUST BE
APPROVED BY THE AUTHOR.

MANSFIELD LIBRARY
UNIVERSITY OF MONTANA
DATE: 1988

OPEN SPACE ACQUISITION TECHNIQUES AND MANAGEMENT OPTIONS
FOR RURAL COMMUNITIES

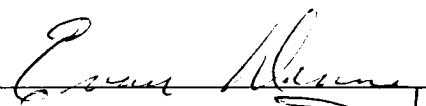
By

Keith B. Fife


B.A., University of Colorado, 1979

Presented in partial fulfillment of the requirements
for the degree of
Master of Science
UNIVERSITY OF MONTANA
1988

Approved by:


Chairman, Board of Examiners


Dean, Graduate School


Date

UMI Number: EP35350

All rights reserved

INFORMATION TO ALL USERS

The quality of this reproduction is dependent upon the quality of the copy submitted.

In the unlikely event that the author did not send a complete manuscript and there are missing pages, these will be noted. Also, if material had to be removed, a note will indicate the deletion.



UMI EP35350

Published by ProQuest LLC (2012). Copyright in the Dissertation held by the Author.

Microform Edition © ProQuest LLC.

All rights reserved. This work is protected against unauthorized copying under Title 17, United States Code



ProQuest LLC.
789 East Eisenhower Parkway
P.O. Box 1346
Ann Arbor, MI 48106 - 1346

ACKNOWLEDGMENTS

I would like to thank my graduate committee, Evan Denney, Darshan Kang, and Paul Miller for their time and contributions.

I would also like to thank my best friend and wife, Kathy Portner, for her patience, typing, editing, encouragement, input, and support throughout this project.

Thank you to Bennett Boeschenstein, Mesa County, Colorado Planning Director and Jon Schler, Director of the Colorado Rural Community Assistance Program, who were kind enough to allow me the use of their libraries.

I would also like to thank my parents, Russell and Irene Fife, for their moral support and concern.

TABLE OF CONTENTS

	PAGE
ACKNOWLEDGMENTS	ii
LIST OF TABLES	iv
CHAPTER I INTRODUCTION	1
CHAPTER II RURAL OPEN SPACE	6
Summary	11
CHAPTER III ACQUISITION TECHNIQUES	12
Introduction	12
Fee Simple Interest	12
Purchase	12
Donations	16
Less-Than-Fee Interests	18
Acquisition	18
Conservation Easements	20
Summary	23
CHAPTER IV FINANCE PROGRAMS	25
Local Government	25
Federal and State Programs	27
Private Actions and Partnerships	32
Management Roles	37
Summary	40
CHAPTER V PLANNING AND REGULATORY TECHNIQUES	42
Introduction	42
Master Plans	42
Regulations	43
Tax Programs	50
Summary	51
CHAPTER VI SUMMARY	53
REFERENCES CITED	56
BIBLIOGRAPHY	58

LIST OF TABLES

	PAGE
TABLE 1 PUBLIC COSTS FOR OPEN SPACE VS. LOW DENSITY RESIDENTIAL DEVELOPMENT . . .	10
TABLE 2 FEE-SIMPLE ACQUISITION TECHNIQUES BENEFITS AND CONSTRAINTS	24

CHAPTER I.

INTRODUCTION

The majesty of the Great Outdoors helped make America, and Americans, what we are today. No mere coincidence matched a national character of independence, of resourcefulness, and of generosity, with a land of splendor, vastness, and inspiration.--President's Commission on Americans Outdoors.

The United States has experienced shifting population and increased urban sprawl over the past fifteen to twenty years. Today, growth pressures are no longer limited to the metropolitan areas of our country but are affecting rural environments. As a result, key open spaces, which often support unique ecological environments, are being lost at a rate estimated between one and two million acres annually. In response to this accelerating loss of open space, the President's Commission on Americans Outdoors (PCAO) has called for all levels of government to place a higher priority on preservation of open space and to enter new partnerships with private business, non-profit organizations, and local civic groups in this effort (PCAO, 1986).

Today, local governments are faced with an apparent paradox: the public is demanding more local open space as the emphasis on quality-of-life increases, and government resources for open space programs have been drastically reduced (Walker and Zeller, 1985). Many local efforts to recover from the past decade's energy and natural resource development boom and bust cycle are focusing on tourism and economic base diversification. Also, some communities are recognizing the need to plan and prepare for future growth now rather than reacting to it when it occurs.

In the past, public purchase of open space was a common method of managing growth and protecting sensitive, natural areas. This method has the potential for preserving open lands, excluding land from development, enhancing the aesthetic appeal of a community and improving the marketability of nearby parcels of land (Burrows, 1978). Unfortun-

nately fee-simple purchase of land by the public at fair market value can be prohibitively expensive. The initial costs, maintenance expenses, and loss of taxable land are all problems with this approach. Grant money from state and federal agencies is not easily obtained as in the past, and bond issues are rarely popular in the 1980s.


Communities in the rural west must consider alternatives to outright purchase of land if they hope to preserve significant open space. Among the many techniques for public acquisition of open space are various purchase and donation arrangements. Donations of land allow the donor to make tax deductions and perhaps realize the benefits of a lower tax bracket. Prior to accepting donations, local governments should carefully study each proposal in terms of public costs and benefits.

Acquisition of partial property rights and easements has the advantage of being cheaper than direct purchase of land. Easements permit continued use of the land and keep the property on the tax rolls. Easements for trails or fishing access are examples of affirmative easements. Conservation easements are considered negative in character, because they usually restrict the use of land. Donations of a conservation easement for open space purposes may result in tax relief for the landowner. The Internal Revenue Service recognizes certain perpetual easements as gifts, which are tax deductible. This type of tax concession for preserving open space is attractive to landowners, public agencies, and private land trusts.

Open space preservation techniques have been available for many years, but the key to success is the manner in which they are packaged (Walker and Zeller, 1985). Most rural local governments are not familiar with these techniques and lack the staff and expertise to negotiate and administer such programs. Fortunately, the experience gained by more than 500 nonprofit land trusts is now available in nearly every state in the nation to assist in preserving open spaces (PCAO, 1986).

Federal and state government agencies can be valuable sources of information and resources for implementing local open space programs. Cooperative programs offered by federal agencies such as the Interstate Commerce Commission, the Federal Highway Administration, the Bureau of Indian Affairs, and the Agricultural Stabilization and Conservation Service may compliment local open space programs. State agencies concerned with parks, recreation, and wildlife management are also potential partners. Additionally, the states are responsible for allocating matching dollars from the federal Land and Water Conservation Fund for local open space programs.

Private corporations may also be enlisted as open space donors to supplement public budgets. This technique is becoming popular. Communities and corporations both derive benefits from such partnerships. Corporations receive tax concessions and positive public relations while demonstrating concern for the community's needs (Harris and Hepner, 1983).

 Most communities have a rich resource in volunteer groups and individuals willing to protect and enhance their environment through civic organizations' efforts, corporate incentives, and nonprofit land trusts. If a community has successfully enlisted private cooperation and formed partnerships in the acquisition program, it should extend such relationships to the open space management phase. These groups are willing to invest time and energy in their community in many creative ways including fund drives and adopt-a-park, trail, and river programs. The Cooperative Management System used on the Appalachian trail is a classic example of a successful public/private partnership (Metzger, 1983).

A community's master plan should include policies for identification and protection of open space. Ideally, public and private development should be consistent with the adopted plan. The master plan should address methods of protecting open space in a variety of policy issues.

↓ Local government's police power, in part, can be exercised through the adoption and enforcement of zoning and subdivision ordinances. If these ordinances are consistent with a community's master plan, the implementation of policies concerning open space will be more assured. Zoning techniques relevant to protection of open space include: exclusive agricultural zoning, large lot zoning, overlay or special purpose zoning, recreation or open space zoning, and floodplain zoning. Subdivision and planned unit development controls are often utilized to protect open space by requiring dedications of open space to the public or a land owner's association, or cash payments-in-lieu of dedication. *ordinances*

* Performance zoning is an alternative to traditional zoning and has become increasingly popular. This technique allows a developer flexibility in design as long as certain minimum open space ratios and levels of protection of sensitive lands are met. Most performance zoning ordinances require bufferyards, which are often open spaces, between incompatible land uses as well as the designation of a minimum amount of active recreational land in a development. *open space by developer*

Compensable regulations are another technique of preserving open space through a combination of zoning and the exercise of eminent domain powers. Land is given a "permanent" zoning designation with this approach. If a landowner sells land and its value is reduced by the zoning, the governing body compensates the seller for the loss in value. This technique may be used more widely in light of the recent U.S. Supreme Court decisions on local land use regulation and a landowner's right to just compensation (107 S.Ct. 2378; 107 S.Ct. 3141).

A rather new method of preserving open space is the concept of transferring development rights (TDR). This technique is based on the view of the right to develop land as one of several rights in the "bundle of rights" included in fee-simple ownership of land. The right to develop property is transferable to other properties just as

water rights may be severed and transferred. For TDR to be a successful technique an adequate demand for development rights must exist (DeVoy, 1975).

* Some states have adopted tax programs to preserve open space. In some programs rural, agricultural or open space zones are created and given preferential tax assessments. Other states allow agricultural and open space areas to be assessed based on the land's current use rather than its "highest and best use" potential.

This study addresses a current dilemma facing the rural west today: how to protect and enhance the quality-of-life which open space provides in times of drastically reduced government resources and slow economic activity. The provision of open space is being shifted to the local level as the public demands green spaces and recreational opportunities shorter distances from home (PCAO, 1986). The tools are available for local preservation, but successful protection of valuable open space requires planning and cooperation between and among all levels of government, private business, civic groups and conservation organizations.

CHAPTER II.

RURAL OPEN SPACE

It seems of supreme importance to preserve and enhance areas where the rural amenities can be enjoyed in a delightful, natural setting.--William R. Lassey

The term "open space" is defined in various ways, most of which include a bias toward urban areas. For example, a definition of open space in the federal Housing Act of 1961 reads:

...any undeveloped or predominantly underdeveloped land in an urban area which has value for (a) park and recreation purposes, (b) conservation of land and other natural resources, or (c) historic and scenic purposes. (Williams, 1969)

Most definitions refer to minimally developed areas and often provoke a negative reaction to the term. In rural areas open space may suggest the prevention of development which can be translated into the prevention of jobs and growth. Terms such as open land, greenspace, parkland or countryside may have a more positive connotation (Shomon, 1971). Also, some rural residents continue to hold onto a frontier philosophy which means development should be uncontrolled. In such cases, it can be very difficult to "sell" the concept of protecting open space. *red needs*

For the purpose of this study, which has a rural emphasis, open space shall mean: environmentally sensitive areas, such as wetlands and steep slopes; agricultural land, including pasture and rangeland; forests; and other natural and wildlands such as mountains, dunes, deserts and critical wildlife habitat. Open space also includes minimally developed recreation areas, such as bike-hike trails, picnic areas, nature study areas, and rivers and other water bodies.

Growth pressures in the United States are no longer limited to the urban and suburban areas but are also affecting rural environments. The U.S. Department of Agriculture estimates that 1.3 million acres of rural land are lost annually to urban uses, and the U.S. Fish and Wildlife Service reports the loss of nearly 500,000 acres of wetlands each year (PCAO, 1986). Agricultural lands and wildlife

habitat, often the same land, are vitally important elements of rural areas. In turn, the open and natural character of rural areas attracts many businesses and people to rural environments.

* The values and functions of open space are numerous. Even in rural western states, with vast public lands, the protection of open space on the local level makes environmental, social and economic sense. In the 1980s people are demanding more open space and recreation opportunities closer to where they live. As more people move to rural areas they are expecting the same opportunities they had in urban areas (PCAO, 1986). Local open space can provide opportunities unavailable on other public lands which may not be appropriate for or managed for public uses.

Communities faced with severe downturns in economic activity may consider planning for potential growth as a waste of time. However, it is important to realize that slow times are simply one side of repeating boom and bust cycles many rural areas face. Logically, planning for the next boom is better accomplished during slow times when rational, long-term goal setting is possible than reacting to growth when it occurs in a panic mode void of long-range planning.

* → Areas of open space provide many benefits to a community. For example, open space adjacent to water bodies can protect water quality by reducing sedimentation, runoff and erosion; by naturally filtering suspended pollutants; and by providing areas for groundwater recharge. Flood damages can also be lessened and the need for expensive flood control measures can be reduced or eliminated if floodplains are protected from development.

While providing multiple environmental, ecological, and conservation benefits, open space also enhances a community's appearance. Natural vegetation, scenic hillsides and water courses may abate or buffer visual blight and noise levels of urban activities (Harris & Hepner, 1983). Provision of local open space can also enhance the

livability of a community by making it more attractive and giving expression to the community's relation to the land, water, and topography. The social values of open space are difficult to quantify, but are nevertheless, very important considerations. Clean air, water, and outdoor areas which provide opportunities for recreation, relaxation, contemplation, education and aesthetic appreciation all contribute to the high quality of life people increasingly demand (Heckscher, 1977). Also, more Americans than ever enjoy walking, swimming, fishing, boating, and bicycling, all activities compatible with linear open spaces such as floodplains, abandoned railroads and utility corridors (PCAO, 1986).

The economic values of open space can be measured in a number of ways. The economic effects of attracting business and new residents to an area are difficult to quantify and may not be realized in the short-term. However, as more people and enterprises continue to move away from the cities and seek a better quality of life, it makes sense for communities to protect and enhance their local, rural amenities. Open space is one of the primary amenities people demand. Open space also stimulates tourism and provides outdoor recreation opportunities. Attracting tourism is presently a goal of many rural communities in an attempt to diversify and strengthen local economies and to avoid their historic dependence on extractive natural resource industries. Although publicly owned or designated open space generates little or no property tax revenue, it may enhance the value of adjacent lands thereby preserving or expanding the local tax base (Harris & Hepner, 1983).

Preserving open space can avoid the public costs of providing utilities and services to development which might have occurred on the protected land. Studies in California and other parts of the country indicate that, in most cases, land developed for residential purposes eventually costs local government more in terms of infrastructure, schools, fire and police protection, and other services than the

development pays in property taxes (Strafford Regional Planning Commission, 1977). Table 1 compares the average annual, public costs of low density development and open space acquisition and management for California communities. As one solution, development impact fees are increasingly charged to new development to lessen the financial burden on local government and to ensure that growth pays its own way.

* It makes economic sense to protect areas of natural hazards from development. Allowing development to occur in floodplains, on steep and/or unstable slopes, in areas subject to subsidence and other geologic hazards, and in areas of high fire hazard may be costly to the public in terms of property damages. This additionally exposes local government to liability for not protecting the health and safety of the public. Inherent to many such lands unsuitable for development are multiple open space values which should be considered.

SUMMARY

Open space is a vital element of rural areas and includes natural and wild areas, agricultural lands, environmentally sensitive areas, and minimally developed park or recreation areas. Recognizing the functions and values of open space and planning in advance of growth can minimize haphazard development and prevent the destruction of a community's rural amenities which attract growth. As growth pressures increase, rural communities with plans in place may be in a position to provide open space and recreational opportunities people have come to expect.

TABLE 1
PUBLIC COSTS FOR
OPEN SPACE vs. LOW DENSITY RESIDENTIAL DEVELOPMENT

<u>Low Density Development</u>	<u>*Annual Cost</u> (millions of dollars)
Extension of utilities	\$173
Maintenance of additional utilities	84
Interest on utility investments	260
Provision of government services	<u>167</u>
TOTAL	\$684
 <u>Open Space</u>	
Land Acquisition (includes interest)	260
Administration & Maintenance (for the year 2000)	<u>30</u>
TOTAL	\$290

* 1970 dollars

Source: Heller, Alfred. 1971. The California Tomorrow Plan.

The benefits of protected open space are multiple. The economic, social, and environmental values of open space should be considered by rural communities working to strengthen and diversify local economies. Protecting open space is vital to ensure future generations the opportunity to share the American heritage tied so closely to the outdoors.

CHAPTER III.

ACQUISITION TECHNIQUES

* A thing is right only when it tends to preserve the integrity, stability, and the beauty of the community, and the community includes the soil, waters, and flora, as well as people.--
Aldo Leopold

INTRODUCTION

There are many ways in which land or interests in land may be acquired for open space purposes. Ownership of open space by public agencies may be accomplished either through outright purchase or as acceptance of a donation. Often a combination of techniques is necessary for a successful open space preservation program. Each potential acquisition may have unique characteristics, and should therefore be tailored to meet the needs of both the public and seller or donor.

FEE SIMPLE INTEREST

A fee simple conveyance of land is the legal terminology for the transfer, by execution of a standard deed of conveyance, of all interests in a tract of land to another party. Fee simple ownership by the public may allow complete control over the land. Such ownership suggests permanent preservation of open space; however, the public agency which exerts control over the land may be subject to changes in public policies under different elected and/or appointed officials over time.

Purchase

Direct purchase of a fee-simple interest in land may be accomplished in a variety of ways. The following briefly describes alternative methods of purchasing land.

An all-cash purchase of land is the simplest and most direct method of acquiring open space. If the money is available for such purchases the public agency buying the land should attempt to secure a discount from the fair market value. When interest rates are high a discount of at least ten percent is considered appropriate. A discount sale

entitles the seller to a tax deduction because the transaction is considered a bargain-sale. (Bargain sales are discussed below.) (HCRS, 1979).

An installment purchase allows the payment for land to be spread out over a number of years. This arrangement can be advantageous to both the public agency with limited annual funds and the seller. The landowner transfers title to the public agency at the beginning of the sale but receives payments over a longer period. This allows the public to acquire the open space and avoid a large lump sum expenditure. The seller may use this method to avoid the progressive tax rate structure applied to capital gains by spreading out the gain over the term of the installment contract.

Installment purchases are usually executed by means of a deed of trust, purchase money mortgage, or other security interests in the land. The conveyance instrument may include provisions allowing the seller to continue to use the land, or decreasing portions of the property, through the installment period. Since title transfers to the public agency upon execution of the instrument the landowner is exempt from property taxation but may benefit through continued use of the land (Parker, 1980).

The purchase of land at a price less than its fair market value is considered a bargain sale. (The fair market value should be determined by a professional appraisal of a property. Most appraisals are based on comparisons of current retail sale prices of similar properties.) In a bargain sale the seller, or more accurately seller-donor, realizes the benefits of both a gift and sale: some actual cash is received; the resultant capital gains tax is reduced; brokerage fees are avoided; a charitable tax deduction is applied to the contributed portion; and a higher tax bracket resulting from a full-value sale may be avoided (Harris and Hepner, 1983).

Land which is desirable as open space is often held by a common landowner as several tracts or parcels. In this situation, a public agency may purchase an option or a series of options to acquire re-

maintaining parcels upon the acquisition of a single parcel. This allows the public to acquire open space incrementally and spread out the costs over a number of years. The landowner benefits because the money received for the options does not become taxable income until the options are exercised (Parker, 1980). To ensure some control over the parcels yet to be purchased, the acquiring entity may wish to negotiate leases on the remainder until those parcels are purchased.

The City of Boulder, Colorado has used the partial purchase with options technique successfully in its open space program. At the time of purchase the City usually leases the acquired parcels back to the landowner for agricultural purposes (Parker, 1980). This sale and leaseback arrangement minimizes maintenance costs for the City and generates income from the leases while protecting open spaces. The City gives up short-term, exclusive control but is assured long-term ownership and control of the land. Tax considerations for such arrangements are not clear. Leases generally require the landowner to pay the property taxes. However, when the landlord is a public agency the property may be tax exempt only if the land is used for public purposes. The problem arises when the lessee is a private party who receives a benefit from the arrangement (HCRS, 1979).

Similar to the options technique is the purchase of the right-of-preemption. Local governments may purchase the right of first refusal or preemption on land considered potential open space. This means when a landowner decides to sell a tract of desirable open space the entity which holds the right-of-preemption is given the opportunity to make the first offer on the property prior to the land going on the market. The problem with this approach is the uncertainty of if and when the designated land will be offered for sale.

Suitable land for open space may sometimes be purchased as tax delinquent property. County real estate taxation departments, usually the Treasurer's or Assessor's office, often prepare a list of tax delinquent lands for various county agencies' review. If a delinquent parcel does not sell at auction, the county may acquire it at a cost

equal to the taxes, penalties, and interest due on the parcel; however, the county will not hold the deed to the parcel until the landowner's redemption period expires. Public agencies considering acquisition in this manner should thoroughly review the status of existing liens and mortgages on such properties prior to committing public funds to the purchase. If used properly this technique allows acquisition of open space at a tremendous savings (Harris and Hepner, 1983).

Another method of conserving open space through purchase is to buy the desired land and, subsequently, resell it with restrictions or covenants on its use. The restrictive covenants are written into the instrument of transfer and should run with the land. This method allows land purchased by a public agency to return to the tax rolls after appropriate restrictions have been imposed to protect the identified values of the land. This arrangement can be used as a revolving fund which uses cash from resales to purchase additional land (Harris and Hepner, 1983). Such a fund will probably require supplemental deposits over time, because the market value of the restricted land is generally lower than the price of the original unrestricted land.

Government agencies may exercise their power of eminent domain to acquire land for open space purposes. This technique, often called condemnation, is an unpopular acquisition method and is usually used as a last resort. When a designated tract of land is under immediate threat of development or other use which would alter or destroy its open space values, local governments may enter condemnation proceedings to halt or prevent the destruction. Eminent domain is also used when a landowner refuses to negotiate a sale of designated open space to the public.

The courts have upheld the taking of land for public purposes. Justifications for such takings include provision of parks, flood control, irrigation, prevention of soil erosion, wildlife management, recreation, protection of water supplies and urban renewal. The

courts require government agencies to pay "just compensation" for condemned property. Through the condemnation proceedings the courts determine the fair market value of the taken property. This politically unpopular acquisition technique can be very expensive and is therefore best used for small tracts of land and only as a last resort.

Land banking is another alternative method to preserve open space through purchase of land. The public acquires undeveloped land and holds it for a future public use or resells it to developers in a manner which controls the rate and pattern of growth. The idea is to acquire land well in advance of development pressures and, thus, at relatively low costs. This allows the public to determine if and/or how the land will be developed. Voluntary sales of such land is the preferred acquisition technique but condemnation may be necessary.

Such direct control over land should result in orderly growth, efficient investments in infrastructure, and appropriate use of the land. Acquired lands may be leased to private parties to generate income, which partially offsets lost property taxes, and to maintain the property. Establishing a revolving land bank fund can minimize necessary expenditures to maintain the program.

Land banking is a relatively new technique in the United States but has been used widely in Europe. Generally, land banking is not particularly popular in this country. In the rural west the idea of the public having extensive land holdings and exclusive control over land is contrary to traditional attitudes concerning private property rights. Also, land banking may be too complex for rural local governments to manage (Parker, 1980).

Donations

The best way to finance a fee-simple acquisition is to receive the land, or money to buy the land, as a donation. Fortunately, the federal income tax laws encourage such donations as charitable contributions. The individual or corporation making the donation is normally entitled to a tax deduction equal to the value of the donation.

Such tax incentives are most advantageous to people in the higher tax brackets who own highly-appreciated property. Generally, the tax laws allow donations which exceed 30 percent of the donor's adjusted gross income for one year to carry the deduction over the next five years. This arrangement encourages sequential donations (Northeastern Illinois Planning Commission, 1982).

Before a public agency accepts a donation the proposal should be carefully studied. Local governments should review each proposal for its appropriateness, potential maintenance costs, restrictions on use and conformity with public policies and plans. When a donation of money or services is accepted it should be used as soon as possible to acquire or enhance open space. Timely, visible use of donations for open space can generate community spirit and stimulate additional donations. Provision of tangible results from donations is an extremely valuable method of enhancing community support for open space programs (Harris and Hepner, 1983). Additionally, the donor may accrue the satisfaction of altruism as well as demonstrated public appreciation and commemoration (Shomon, 1971).

The simplest and most direct method of donation is an outright gift of fee-simple title to land or money to purchase land. This usually provides the greatest tax benefits to the donor including the potential to spread out tax deductions over a six year period.

A bargain sale is another donation method. As discussed above, in a bargain sale a charitable contribution tax deduction applies to an amount equal to the difference in the fair market value of the land and the actual sale price.

Fee-simple title may be donated to a public agency in a will. Land willed, or bequeathed, to a governmental agency is not subject to estate or inheritance taxes. The bequest is deductible from the deceased's gross estate and reduces estate taxes for the heirs. The donor not only provides tax advantages to heirs but is also allowed to continue to use the land as long as she or he lives and to direct the future use of the land (HCRS, 1979).

LESS-THAN-FEE INTERESTS

Acquisition

Public acquisition of partial property rights in desirable open space allows public control over certain aspects of the land. A partial property right or less than fee interest may be acquired by any of the purchase or donation techniques previously discussed. Purchase of less than fee interests in land is less expensive than fee-simple acquisition. However, the preferred method of acquiring partial property rights is by donation. The donor is entitled to tax benefits equal to the value of the gift.

A method similar to bequeathing land is called a donation with a reserved life estate. An individual donates property to a public agency but retains the use of the property for her/his own lifetime and/or the lifetime of family members. The contribution is known as a gift of a remainder interest. The donor is usually entitled to an immediate income-tax deduction for the charitable contribution equal to the difference between the present fair market value of the property and the value of the retained interest. This arrangement has a positive effect on future estate tax liability of heirs and enhances the marital deduction of the donor's surviving spouse (HCRS, 1979).

Donation of an undivided interest in land to a public agency entitles the donor to a deduction for the current fair market value of the interest donated. An undivided interest is a percentage interest in land and does not refer to a specific physical portion of land. The donor retains an interest in the property as well. The receiving entity usually leases the remaining interest in the land to ensure consistent management. This method is used by some individuals to make a series of donations over a period of time to realize tax benefits for several years. Donors should be encouraged to continue these partial donations and/or include total conveyance in the donor's will (Harris and Hepner, 1983).

Open space may be acquired in fee-simple with conditions. A common condition attached to such transfers is a reverter clause. A

reverter clause states that as long as the land continues to be used for a specific purpose such as parkland, it remains public property; however, should this use be discontinued, the ownership would revert to the original landowner.

Public entities may enter lease agreements with owners of desirable open space. A lease conveys temporary possession or use of land for a specific time period, usually in exchange for rent or other compensation. A lease agreement stipulates such things as the term of the lease, usually from one to 99 years, whether it is renewable, and who is responsible for maintenance, insurance and liability. If the lessee is a public entity and the land is used for public purposes the property may be exempt from property taxes. A donated lease generally is not considered a charitable contribution unless the lease is given in perpetuity and the land is used for conservation purposes (HCRS, 1979). Leases allow public protection of open space without incurring the cost of actually owning the land. One constraint involved with such arrangements is the temporary status of many leases and, thus, the lack of permanent protection.

Acquisition of the right to use another's land, an easement, is a valuable technique for acquiring access to open space without public fee-simple ownership. Affirmative easements allow the easement owner a positive but limited right to do something on the land of others. The most familiar easements are utility easements or rights-of-way on private property. Easements allow the landowner continued use of the land in any manner which does not interfere with the easement owner's rights to use the land.

The most common affirmative easements used for open space purposes are public access easements such as hike/bike trails and fishing or hunting access. Easements are a relatively inexpensive alternative to fee-simple acquisition for linear parks, trails, stream courses and other multiple use corridors such as power line and irrigation canal routes. Ideally, such easements should be acquired through donation

or required public dedication as a condition of approval for a development proposal. Trail easements through residential areas which connect public open spaces, watercourses or recreational facilities may enhance the marketability of adjacent and nearby properties (Harris and Hepner, 1983).

Conservation Easements

Conservation easements are considered negative in character because they restrict the use of land. They are, perhaps, the most powerful and flexible technique for preserving open space without conveyance of fee-simple ownership. Conservation easements permit the property owner to continue appropriate, private use of the land while protecting its open space values. This requires the landowner to relinquish the rights to develop or use the land in manners which would be detrimental to the public interest as defined in the easement.

Affirmative rights are also generally included in a conservation easement. Nearly all conservation easements allow the easement owner to enter the property to inspect for compliance with the restrictions and to enforce the easement. The easement may also allow public access, the right to conduct research, or other uses consistent with the intent of the easement.

In Colorado, conservation easements may be granted to a governmental entity or charitable organization to retain land, water or air space "predominantly in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, recreational, forest, or other use or condition consistent with the protection of open land having wholesome environmental quality of life sustaining ecological diversity..." (CRS 38-50.5-102). To protect these values, conservation easements typically impose prohibitions or restrictions on: specific land uses, such as subdivision, industrial development, solid waste disposal, roadways, mineral extraction, and timber management practices; alteration of topography and watercourses; billboards and signs; certain agricultural practices, such as the use of chemical pesticides; and alteration or removal of historic sites.

The specific restrictions imposed by a conservation easement should be worked out between the landowner and the acquiring entity. The needs and goals of both the landowner and the public must be considered in the negotiation process. The agreed upon terms are spelled-out in detail in the easement deed. Conservation easements do not restrict the landowner's right to transfer the restricted property, but the easements run with the land and, thus, obligate future landowners.

Outright purchase of a conservation easement is possible, but may be prohibitively expensive. This is particularly true in areas experiencing development pressure and inflated speculative land values (Shomon, 1971). Therefore, public agencies should make efforts to have conservation easements on desirable open space donated to an appropriate entity.

Donors of easements in perpetuity for conservation purposes may be entitled to federal income tax deductions. The Miscellaneous Revenue Act of 1980 (Public Law 96-541) defines conservation purposes as four categories: preservation of land for outdoor recreation by the general public or for educational purposes; preservation of significant open space; protection of natural ecosystems; and/or preservation of historically important sites or structures. A conservation easement which serves one or more of these purposes is considered a qualifying conservation easement by the Internal Revenue Service (IRS). However, failure to protect all conservation values on a property can disqualify the donation.

A qualifying donee must have enforcement rights, hold the easement exclusively for conservation purposes and agree not to transfer the easement for any compensation. The donor of a qualifying easement to a qualifying donee is entitled to a tax deduction equal to the difference in the fair market value of the property before and after the easement is granted. Rules for carrying the deductions over a number of years also apply to such donations.

In 1986 the IRS released final regulations on the deductibility of conservation easements. Qualifying donations of open space easements (including farmland and forest land) must either be made pursuant to a clearly delineated governmental policy or for the scenic enjoyment of the general public as a public benefit. The final regulations clarify these two tests. First, scenic enjoyment and public benefit may be established by a number of factors including: degree of compatible land use with other land in the vicinity; intensity of development in the area; importance of the property in preserving a local or regional landscape or economy; and consistency of the proposal with existing conservation programs. Secondly, a clearly defined governmental policy requires more than a single official declaration of conservation goals by a legislative body. The IRS looks beyond such goal statements to the actions of the governmental entity in pursuing open space preservation and rigorously reviewing proposed conservation easements.

The final regulations also revise the extent to which public access is required for a qualified conservation donation. Some degree of physical or visual access must be provided; however, unlimited public access is not necessary and the entire property need not be visible to the public to qualify (NASDA, 1986).

Other arrangements for donations are also possible. Conservation easements may be donated for a given period of time; however, such donations are not eligible for income tax deductions and lack the permanence which make conservation easements desirable to public agencies. Donations may also be made through bequests. Despite the manner in which a conservation easement is donated to a qualifying entity, estate tax benefits will be realized by heirs because the conservation easement reduces the value of the estate. Reduced property taxes from conservation easements should not deter local governments from pursuing their acquisition, since surrounding land values are likely to increase with the assurance of nearby lands remaining in open space (Parker, 1980).

SUMMARY

Acquisition of land or interest in land for open space purposes either by purchase or donation allows local governments to exert control over the use of the land. Public ownership of open space can potentially extend permanent preservation of the land by excluding it from development, or limiting the types of development permitted.

Unfortunately, outright purchase of fee-simple interest in land at market value is often prohibitively expensive for rural local governments. The initial costs incurred by any purchase method and the effect of removing land from the property tax rolls are serious constraints to acquiring fee interest in land. (Table 2)

Local governments should weigh the costs and benefits of acquiring open space. It can be argued that the long-term benefits of open space outweigh the short term costs for acquisition and maintenance and loss of tax revenue. Land developed for residential purposes in most cases costs local government more in terms of infrastructure and service expenditures than the development pays in property taxes (Strafford Regional Planning Commission, 1977). Also, parcels located near public open space usually increase in value and, thus, expand or at least preserve the community's tax base. Therefore, it behooves local government faced with tight budgets and shrinking federal assistance to explore alternative methods of open space acquisition and to encourage donations of land or interests in land.

TABLE 2
FEE-SIMPLE ACQUISITION TECHNIQUES
BENEFITS AND CONSTRAINTS

All-Cash	Installment Purchase	Bargain Sale	Partial Purchase with Options	Right of Pre-emption	Tax Delinquent Land	Purchase/Resale	Eminent Domain	Land Banking	Donations	BENEFITS
X									X	Simple and Direct
X		X			X				X	Below Market Value
X	X	X	X	X	X		X		X	Permanent Protection
	X		X					X		Costs Spread Over Years
	X		X							Seller Continues Use of Land
				X						Right-of-First-Refusal
						X				Use Controlled Without Ownership
							X			Quickly Executed Transfer
X	X	X	X	X	X	X	X	X	X	Public Control of Use
X	X	X	X						X	Tax Benefits to Seller
X	X		X	X		X	X	X		<u>CONSTRAINTS</u>
										High Costs
X	X	X	X	X	X		X	X	X	Land Taken Off Tax Rolls
X	X	X			X		X	X	X	Maintenance Costs
						X				Difficult to Enforce
								X		Complex Management
X				X	X				X	Uncertainty of Sale
							X	X		Politically Unpopular

CHAPTER IV.

FINANCE PROGRAMS

The time has come for us to use the taxing powers of government as a creative force for conservation. Why not tax the owners of ugliness, the keepers of eyesores, and the polluters of air and water, instead of penalizing the proprietors of open space who are willing to keep the country beautiful?--
Stuart Udall

LOCAL GOVERNMENT

In good economic times the purchase of land or interests in land for open space purposes at the local level is possible by using the entity's general fund. Unless special sources of revenue are tapped for this purpose, such expenditures must compete with other programs for funding. Strong, visible public support for open space preservation during the budgeting process may exert enough political pressure to allow some success in competing for limited funds. However, today many communities in the rural west are faced with slow economic activity and are cutting back on "essential" services such as police and fire protection. Such a scenario greatly lessens the chance of open space programs competing successfully. Therefore, rural communities must explore alternative financing programs.

The tenth amendment of the U.S. Constitution, the "Reservation of Powers Clause", authorizes state and local governments to issue securities for public purposes. This power may be exercised by issuing bonds and incurring a debt to pay for the provision of public open space or facilities. As discussed previously, the courts have interpreted the public purpose to include the provision or protection of open space and ecological systems. Advantages to issuing bonds for open space acquisition include: the ability to finance projects when the immediate ability to pay is limited; the debt is spread over a long period of time and is paid back by many people (the taxpayers); and repayment of the debt is paid with inflated dollars, assuming inflation continues over the term of indebtedness (People for Open Space, 1985).

Many communities in the rural west are heavily indebted as a result of issuing bonds for capital projects during the energy and natural resource booms of the late 1970s and early 1980s. Commonly, these communities forecasted their ability to repay on the basis of continued rapid population and economic growth. Today, as a result of the energy and natural resource busts of the past several years, these communities are struggling to pay off their current debt and are, at best, leery of and generally unwilling to consider taking on the additional debt of new bonds.

Local governments may also use their taxing powers to collect revenues for open space programs. Special taxes may be earmarked for particular purposes such as funding open space acquisition. Most commonly a sales tax is used to accomplish this. For example, in Colorado, Boulder and Jefferson counties have directed a 0.4% and 0.5% sales tax, respectively, to open space programs for several years (Parker, 1980). In order to impose a sales tax, an election is usually required. Obviously, for such a measure to be successful at the ballot both public and political support for the program must exist.

Another taxing device available for funding open space programs is the creation of special districts such as recreation or open space districts. These districts are quasi-governmental entities and may assess a property tax to lands within the district. Special districts, as legal entities, may also be eligible for grants and loans to supplement their budgets. To create a district, a popular election may be required, depending on the specific state's enabling legislation.

Trust funds designated specifically for open space programs may also be used by local governments. This technique isolates funds within the overall budget for specific uses. The trust fund may be funded by any of the mechanisms described above, or may be established as an enterprise fund which retains revenues generated by an open space program. Contributions of cash, bargain sales, bequests and other gifts are more likely to be given to a specific program's trust

fund than to the general fund where the contribution may be "lost" in the other revenues. Creation of such funding mechanisms is very political since earmarked funds limit discretionary expenditures by governing bodies. Therefore, strong, public initiative and support are necessary to create and sustain trust or enterprise funds for open space (Harris and Hepner, 1983).

FEDERAL AND STATE PROGRAMS

The federal government has significant influence on state and local development decisions. In the west, where much of the land is agricultural and/or publicly owned, federal programs are particularly important. The 1985 Omnibus Food Security Act (1985 Farm Bill) which authorizes the removal of 45 million acres from crop production for conservation, recreation and wildlife purposes is a prime example. Under this and other federal legislation the Agricultural Stabilization and Conservation Service cost-shares with farmers and ranchers for implementing conservation and environmental protection practices which often enhance wildlife habitat (PCAO, 1986).

Development in floodplains is currently subsidized by the National Flood Insurance Program as administered by the Federal Emergency Management Agency (FEMA). Communities which adopt and enforce FEMA approved floodplain development regulations are eligible to participate in this program which insures structures in floodplains. Floodplains in their natural state provide many benefits to communities in addition to their aesthetic and recreational values. Alteration or development of floodplains is detrimental to these values.

The President's Commission on Americans Outdoors recommends the revision and possible elimination of subsidies for floodplain development. Such federal action is not unprecedented. The Coastal Barrier Resources Act bars federal assistance and subsidies to development on coastal barrier islands. The intent of repealing subsidies is, most importantly, to protect important ecological systems such as floodplains while saving the government tremendous amounts of money (PCAO, 1986).

Federal, state, and local open space and recreation objectives may be linked through what the federal government terms Coordinated Resource Management Programs. Several states are currently using this system (PCAO, 1986). This arrangement involves coordinating planning among all levels of land management agencies. Ideally, coordinated programs should identify goals and recommend implementation tools for adjacent lands. These programs are most appropriate and important in areas where federal lands play a key role in recreation and open space systems. The New Jersey Pinelands National Reserve is the classic case study of coordinated management. The Reserve is managed by federal, state, and local entities under regulations designed to implement the Pinelands Comprehensive Management Plan. The Reserve requires cooperation of the National Park Service, state government, and 52 municipalities to manage about 1.1 million acres or nearly 40% of the state's entire land mass (Brooks, 1986).

Taxing policies of the federal government play an important role in local open space programs by providing incentives to protect valuable resources. The 1986 federal income-tax reforms left intact the IRS regulations concerning deductibility of donations for conservation purposes. This is good news for rural open space programs which depend heavily on donations.

Many federal agencies have the authority and responsibility to support and enhance local open space and recreation programs. Local governments should keep abreast of federal projects planned in or near their jurisdictions which could contribute to local programs. Among the agencies to consider for assistance are the following:

1. The Interstate Commerce Commission which, under the National Trails System Act, has the responsibility to convert abandoned railroad rights-of-way into recreational trails. Legislation submitted this year would void a 1922 law which required abandoned rights-of-way to revert to adjacent land owners. If this law passes, all abandoned rights-of-way in the western U.S. would become federal property unless qualified state or local governments or private groups were interested in maintaining the land for recreational purposes. The Interior Department would be required to manage all such rights-of-way which traverse federal lands as recreational trails (Parks and Recreation, Oct. 1987).

2. The Federal Highway Administration which has the authority to develop boat ramps, bike trails, scenic overlooks, access to recreational sites and other amenities related to highway projects.
3. The Bureau of Indian Affairs which manages 50 million acres of land which are increasingly more accessible to the general public.
4. The U.S. Army Corps of Engineers which is authorized to provide recreational opportunities as part of its flood control programs. (PCAO, 1986)

In 1965 the federal government established the Land and Water Conservation Fund (LWCF) as recommended by the first Outdoor Recreation Resources Review Commission. The Fund was to be used for federal land acquisitions and to assist in state and local acquisition and development of land and facilities for outdoor recreation. Originally administered by the Interior Department's Bureau of Outdoor Recreation, which became the Heritage Conservation and Recreation Service (HCRS) in 1977, the Fund is now directly under the National Park Service (Lancaster, 1983). The LWCF is funded by a portion of the receipts from the sale of oil and gas produced on federally owned areas of the Outer Continental Shelf. The principle is to reinvest nonrenewable resources, oil and gas, in permanent assets for future generations. Initially authorized at \$100 million annually, the Fund reached a peak of \$900 million in 1978. There has been a marked decline in appropriations since then, with the Fund scheduled to expire in 1989.

Historically, 60 percent of the LWCF dollars were allocated equally to the states. The states then distributed a percentage of this share to local programs. LWCF dollars are used as matching funds for acquisition and development of recreation areas. Between 1965 and 1986, 2.8 million acres of recreational lands and waters were acquired by state and local entities through the LWCF. This required \$3 billion in matching funds or properties from state and local agencies and private contributors. On the federal level, 2.9 million acres have

been added to national parks, forests, wildernesses, refuges, and Bureau of Land Management recreation areas with LWCF dollars (PCAO, 1986).

The achievements of the Land and Water Conservation Fund go well beyond the money spent directly for acquisition and development of outdoor recreation areas. The federal dollars served as a catalyst for the allocation of state and local funds as well as private donations to open space and recreation programs across the country. In some cases one federal dollar may have resulted in the contribution of up to ten state dollars. And it is likely that some local programs would never have been approved without the LWCF as a leader and partner (Brooks, 1986).

In 1986 the President's Commission on Americans Outdoors (PCAO) identified a critical need in this country for continued and expanded open space and outdoor recreation programs. The PCAO recommended Congress create a "dedicated trust" to provide \$1 billion annually to succeed the LWCF. The PCAO also recommended the states establish similar trusts to help meet state and local open space and recreation needs. Suggested revenue sources include: real estate transfer taxes, as presently used by Maryland's Program Open Space and Florida's Land Acquisition Trust Fund; energy development royalties and lease revenues from state lands, as presently used by Michigan; mineral severance taxes; sales taxes; lotteries, as presently used by Colorado; summer gasoline taxes; and user fees. Also, a National Geographic Society survey indicates that the public is willing to pay user fees or charges if they believe their money is used in a manner related to their personal use of the area. However, the survey also revealed that the public prefers to have user fees applied to operations and maintenance costs rather than these dollars being used for capital investments (Tindall, 1987).

The Colorado Division of Parks and Outdoor Recreation is responsible for the allocation of Colorado's annual share of the LWCF. Through local input, the State maintains a State Comprehensive Outdoor

Recreation Plan (SCORP) which identifies Colorado's priorities for the use of LWCF dollars. The SCORP serves as a guideline to assist in allocating funds to competing localities. The Division may acquire by gift, transfer, lease, purchase or long-term agreement any land or water, or interest in land or water, which is found to be necessary and/or suitable for outdoor recreation, or the preservation and conservation of sites, scenes, vistas, and open space (Parker, 1980). Such properties are managed by the Division.

State agencies concerned with natural resources, wildlife, outdoor recreation, conservation, and agriculture can assist or enhance local open space programs. Often these agencies provide valuable technical and financial assistance to local governments. Because natural systems do not respect local jurisdictional boundaries, the states play a vital role in protecting and managing multi-jurisdictional systems. State wildlife management agencies are the best example of such a situation. States should also encourage, through proper enabling legislation, local, regional and cooperative multi-jurisdictional approaches to protect common resources and manage growth (PCAO, 1986). Additionally, states can play an important role in local efforts by coordinating state funding for land protection, and the development of highways, schools and other infrastructure with local growth and conservation plans.

A state may also have the resources to identify critical resources that are unique to the state or of more-than-local significance. For example, the Colorado Natural Areas Program, part of the Division of Parks and Outdoor Recreation, maintains a comprehensive statewide inventory of significant natural features in the State. This inventory was originally established by the Nature Conservancy, an international conservation and land-trust organization, which has similar inventories for 43 states. With more than 60 percent of Colorado's natural areas on federal land and one area on open space owned by the City of Boulder, cooperation of federal, state and local

governments and private organizations as well has been mandatory for the success of the Colorado Natural Areas Program (Holiday, 1986).

PRIVATE ACTIONS AND PARTNERSHIPS

Cutbacks in federal programs such as the LWCF illustrate the vulnerability of conservation programs dependent on federal assistance. In order for local open space programs to continue, a broader base of support must be established and maintained. The PCAO discovered that Americans are demanding open space and outdoor recreation opportunities closer to home and, therefore, recommend the provision of open space be focused on the local level. To accomplish this, local governments need to form partnerships among nonprofit organizations, businesses, public agencies and individuals.

The PCAO also recommends that local communities develop an outdoor ethic which reflects pride in our communities and country. This outdoor ethic means "personal involvement in the outdoors...a sense of appreciation for and obligation toward the air, land, water, and living things...courtesy for others using the outdoors...and stewardship: our obligation to ensure future generations' enjoyment of our national heritage." (PCAO, 1986, p. 55). To achieve this goal, the Commission calls on nonprofit organizations, corporations, private landowners, recreation providers and groups, and community leaders to get involved and promote local action. These groups can offer information, set examples, and provide opportunities for outdoor experiences for the public.

Nonprofit organizations are valuable private sources for local open space preservation. Land trusts and similar conservation organizations devoted to the preservation of natural and/or historic areas are considered charitable organizations by the IRS and, therefore, donations to such groups are tax deductible. Private, nonprofit groups often acquire land or interests in land through purchase or donation and, subsequently, transfer their interests to public agencies at reduced prices.

The focus of individual land trusts ranges from international to local. The Nature Conservancy, perhaps the largest and best known land trust, is a land trust devoted to preserving ecological diversity worldwide by protecting significant natural areas. The Colorado Open Lands Foundation (COL) is an example of a state level land trust which assists local and regional preservation efforts. COL was created in 1974 by state law as a private, apolitical foundation governed by a board of directors representing the public and private sectors. Its goal is to preserve historic and natural resources, open space, plant and animal life and the visual environment statewide. Many other states have similar programs; one such program is the Montana Land Reliance. Local land trusts also exist to preserve smaller areas. Colorado's Mesa County Land Conservancy, whose focus is agricultural preservation, is an example of a local trust.

Colorado Open Lands has a proven record as a trusted third party in open space preservation efforts. For instance, COL was instrumental in forming a public/private partnership in Boulder, Colorado. COL accepted fully reclaimed gravel pits along Boulder Creek as a donation from the Flatirons Industrial Park Company and later sold the property to the City of Boulder's open space program for 20 percent of its market value. Through this arrangement, COL was able to provide tax benefits to Flatiron, as well as open space, recreational opportunities, and flood protection to the public at a low cost and receive revenues for future projects (Walker & Zeller, 1985).

Fortunately for small local governments, assistance from over 500 nonprofit land trusts with expertise in real estate law, negotiations and management, and conservation practices is available in nearly every state in the nation. Land trusts and similar private organizations offer several advantages over public agencies. First, these groups are able to act more quickly than government to protect important lands. Quick action can protect critical areas under immediate threat of development and allow adjacent areas to be acquired before

speculation inflates land prices. With fewer bureaucratic constraints, private organizations can be flexible and more creative than government agencies. Because they must generate money to continue to exist, nonprofit groups often operate in an entrepreneurial mode. This allows new ideas to be tested; a risk government is unlikely to attempt. Also, such charitable groups are generally favorably accepted by society. Lastly, perhaps the greatest advantage private nonprofits offer is the opportunity to achieve public preservation goals at reduced or no cost to the public.

Private nonprofits also have some constraints. As with all charitable organizations, these groups are dependent on donations and grants. Such dependence means being faced with the uncertainty of continued funding. To have a substantial impact, large sums of money are required and these groups must compete with other charities for donations. The smaller local groups often are dependent on volunteer time and energy to be successful (People for Open Space, 1985).

Another source local governments should consider to supplement open space budgets and to promote an outdoor ethic is private enterprise. It is estimated that corporate America controls as much as one-third of our nation's land, much of which is not being used (PCAO, 1986, p. 20). The businesses in a community are an integral part of the community. Private business can benefit in many ways by supporting and participating in local open space programs. Corporations are made up of individuals with an array of skills and resources who want a clean, attractive environment in which to live and work. Since open space enhances a community's livability, it contributes to a stable work force and community to the mutual benefit of private enterprise and the public.

Corporations can realize financial benefits by donating to local open space programs. Tax incentives for donations of money, land or interests in land for open space purposes extend to private corporations as well as to individual donors. Corporations are entitled to a charitable contribution in the amount of the fair market value of do-

nated property. Corporate capital gains taxes, at rates significantly higher than individual capital gains taxes, for selling land can also be avoided or reduced through outright donations or bargain sales.

Other incentives for corporate donations include:

1. Reduced or avoided carrying costs of continued land holdings, such as property taxes and liability, security and maintenance expenses.
2. Avoidance of an uncertain land market, brokerage fees, and other expenses related to land sales.
3. The potential to write-off any costs associated with donations as business expenses.
4. Public demonstration of corporate concern for community needs. (Harris & Hepner, 1983)

Private service clubs and organizations are another source of private participation in open space programs. Groups such as the Rotarians, Lions, Elks, Kiwanis, Junior Service League and Altrusa Club have a broad support base and are found in nearly every community. (Lions and Kiwanis Clubs across the country acquire, manage and sometimes donate to the public roadside parks and open areas.) Such organizations are usually excellent fund-raisers and should be enlisted by public agencies for support of open space. By example, the Junior Service League of Mesa County, Colorado recently acquired a two acre parcel of Colorado riverfront property which has been used historically as a raft and boat put-in and takeout point. The League donated the site to the recently formed Grand Junction/Mesa County Riverfront Foundation for public use.

Private landowners can play a part in open space preservation. Much of the rural private land in the west used for agriculture and timber production is also good wildlife habitat and has recreational or scenic values. Adverse economic conditions in these industries has prompted many landowners to consider moving from single-purpose land management to multiple use management. Recreation and wildlife habitat are additional uses these private lands could be managed for. Landowners can benefit through reduced property taxes where local credit is allowed for public access or through reduced federal income

taxes for conservation easements. Additionally, recreational use leases to clubs or government agencies or fees charged for public access to private land can help private landowners remain economically viable (PCAO, 1986).

Landowners need to be made aware of the potential value of their land for recreational purposes. Agricultural extension agencies and soil conservation districts exist in nearly every county in the west. These agencies are good technical resources with excellent potential for reaching rural landowners. Technical information and advice on multiple-use land management is available from extension agents, resource conservation and development services, soil conservation districts, the Soil Conservation Service, the Agricultural Stabilization and Conservation Service, and state agricultural and natural resource agencies. If the billions of dollars spent today by the federal government in price supports for surplus crops were directed to the same parties for wildlife habitat and public access improvements, significant changes in private land management could occur (PCAO, 1986).

Before private landowners open their land to the public, several concerns must be adequately addressed, including:

1. Many landowners have neither the training nor the desire to manage people;
2. Recreational uses are sometimes incompatible with principle uses of the land;
3. Trespass, vandalism, and littering are reportedly increasing;
4. Landowners fear liability suits;
5. Private land is often owned for privacy; and
6. Incentives for the landowner are often lacking.

Most of these legitimate concerns require specific case-by-case attention to be adequately worked out to the satisfaction of the public and the landowner.

Private recreation and sporting groups, such as Ducks Unlimited, and public enforcement agencies can aide landowners with trespass problems through peer pressure, public education programs, posting, and patrolling. Private clubs and organizations should offer public

education programs to foster an outdoor ethic with emphasis on respect for private property rights. These groups should also offer their experience to assist in managing the public use of private lands (PCAO, 1986).

Forty-six states presently have laws which protect private landowners from liability suits when public access is allowed on their property free of charge. Only in cases of gross negligence do these laws extend liability to such landowners. Unfortunately, these statutes may inhibit landowners from opening their land to the public, due to the potentially high maintenance costs for open lands. States should revise their laws to allow private landowners to charge an access fee and continue to have liability protection. Florida is a case-in-point. Floridians who manage their land appropriately for wildlife habitat may charge public access fees without the fear of liability (PCAO, 1986).

Incentives need to be established at all levels of government for private landowners to manage their land for multiple uses. The PCAO suggests implementing incentives such as reduced property taxes, low interest loans, cost-sharing programs, and in-kind donations of expertise from government agencies. Wisconsin's Managed Forest Law is a cited example. Under this law, the State allows lower taxes to be collected locally from landowners who adopt and implement an acceptable forest management plan. The State subsidizes the local governments affected by this program with payments in lieu of taxes. To date more than half the participating landowners have chosen to keep their land open to the public.

MANAGEMENT ROLES

Protection of open spaces does not end with the acquisition or control of such lands. Communities need to seriously consider, as part of the acquisition program, how open space is to be managed. Budget and staffing cuts in the past several years have challenged rural governments to meet community needs for open space and outdoor

recreation. In order to ensure successful and continued open space preservation, communities must explore alternatives to local government management.

Communities which have formed partnerships with various levels of government, private groups, corporations and individuals should include management as an integral part of these relationships. Active, ongoing participation by members of the community in open space management can foster community pride, appreciation and respect for the environment and save the public money at the same time.

State government can assist in local management or directly assume management of open space. State outdoor recreation, parks, and wildlife agencies can jointly manage a designated public area or assume responsibility once the land has been acquired. The states can also provide technical and financial assistance to implement local preservation and growth plans. Management of state programs should be coordinated with local, regional and federal programs. Colorado's Natural Areas Program is an example of state management of land with other levels of government.

Land trusts not only act as conduits in acquiring land but are often holders of conservation easements and other interests in open space. In many cases land trusts have a management role and are responsible for enforcing easements. Trusts and public agencies can realize mutual benefits from partnerships. Larger trusts employ land management experts who can offer assistance and advice to local government programs, and smaller trusts, dependent on volunteers, may turn to government agencies for technical assistance.

Voluntarism is a major part of the American heritage and is presently on the rise. Volunteer organizations offer varied opportunities and exist in nearly every community in the country. Volunteers are particularly interested in working in the outdoors. A 1985 poll conducted by Volunteers for Outdoor Colorado found that 40 percent of the respondents would volunteer for outdoor projects if asked. And the

1986 National Recreation Survey indicated that 16 percent of people over 60 years of age were willing to teach an outdoor recreation skill (PCAO, 1986).

Volunteers are a vital resource in developing and maintaining community spirit. And grass roots efforts and accomplishments provide a source of pride for millions of Americans. Corporations and industry often encourage their employees to volunteer in the community as a demonstration of community awareness and support. Volunteers are willing to invest time and energy to protect and enhance their communities. Open space programs can offer excellent opportunities for such community participation.

A variety of tasks can be taken on by volunteers and often in a creative manner. Commonly volunteer tasks associated with open space and outdoor recreation include routine maintenance, cleanup, trail building, security patrolling and general labor. But volunteers can take on much more than menial tasks, including some administrative and educational functions such as recruiting, training, supervising and conducting guided tours and studies. Fund raising efforts for specific projects allow great creativity for volunteer organizations.

Programs in which volunteers take over maintenance and/or management of a particular park, trail, or water course, termed adopt-a-park, adopt-a-trail and adopt-a-river, are extremely popular and visible means for demonstrating community pride. In Mesa County, Colorado the local Audubon Society chapter has adopted a section of the County's Colorado River Trail through a routine maintenance contract.

The Appalachian Trail, operated as a Cooperative Management System, is a classic example of a public/private partnership. In 1984, state, local, and federal agencies transferred broad management responsibilities for the Trail to the Appalachian Trail Conference, a group of 31 private, nonprofit clubs. Many of these clubs resulted from the Appalachian Mountain Club's formation of the National Volunteer Project (NVP). The NVP was made possible by private foundation

grants and has created six independent groups around the nation, including Volunteers for Outdoor Colorado, to encourage partnerships with government agencies at all levels (PCAO, 1986).

Private commercial enterprises are increasingly entering partnerships with local governments. Private concessionaires may rent sports equipment on public land, take over security responsibilities, manage properties or sponsor joint programs with government agencies. The PCAO found that 60 to 80 percent of local parks and recreation agencies' programs and services are under contract to private partners.

Private enterprise can often operate more efficiently than government and has the profit-motive advantage. Joint public/private programs can offer cost effectiveness, extended and expanded services, avoidance of duplicated efforts, and meaningful outside input to government programs. Also, such partnerships can result in positive public exposure and demonstrated community interest for local enterprises.

SUMMARY

Traditional financing methods available to local open space programs include general fund expenditures, bond issues, sales tax, and special districts. Even with strong, visible, public support for these programs many rural communities faced with tight economic times are unable to generate sufficient revenue to support open space through these methods. Also dependence on state and federal programs and funding sources as supplements to local open space budgets is no longer possible. The federal Land and Water Conservation Fund, which served as a catalyst for open space preservation across the country, is scheduled to expire in 1989, and to date no program has been established to succeed it. Therefore, by necessity, open space programs are increasingly focusing attention on local alternative finance and management methods.

The PCAO recognizes the need to continue and expand open space preservation and outdoor recreation opportunities at the local level. The Commission hopes to start a "prairie fire of action" to meet this need. It calls on local communities to enter partnerships among all levels of government, private nonprofit organizations, private enterprise, individuals, and volunteer organizations in this effort. The ability of public officials, citizens, business and all types of organizations to work together toward an outdoor ethic and active protection of open space and recreation opportunities may determine the destiny of such programs for generations to come.

CHAPTER V.

PLANNING AND REGULATORY TECHNIQUES

In areas where land is abundant, yet awaiting development, how can growth be guided in such a way as to exploit this abundance for the maximum good?--Ian McHarg

INTRODUCTION

A local jurisdiction's authority to plan and regulate development and land use is a valuable technique for preserving open space. Adopted community policies and the enforcement of land use regulations can compliment open space acquisition and management programs. Master plans and zoning and subdivision ordinances are among the traditional tools available to local government to direct development in a manner which preserves open space. For a successful preservation program communities often look to alternative planning, regulatory and taxing mechanisms.

MASTER PLANS

A community's master plan or comprehensive development plan should include policies which direct growth in a manner which preserves identified open space. The master plan should address open space in a variety of policy issues such as land use, transportation, housing and recreation. Included in most master plans is an "official map" showing desirable land uses, including open space. An official map, unlike a zoning map, does not lock parcels into a particular use. Instead, the map is a graphic reference for developers and decision-makers to consult as a guide to community development. The courts have upheld a community's right to enforce its master plan if the adopted policies have been applied consistently in the decision making process. Ideally, public and private sector development should be consistent with the adopted plan.

Specific open space plans are usually part of a parks and recreation master plan, but may be a separate document. Formulation and implementation of an open space plan should be a dynamic and perpetual

process. To be effective, a plan must be "alive" and flexible. Involvement in the planning process should extend to all community interests including citizen groups, elected officials, schools, social agencies, neighborhood associations, redevelopment agencies, utility companies, private clubs, and planning staffs.

An open space plan should include an up-to-date inventory of available and appropriate land for possible future open space. The plan should be a policy plan of goals and objectives based on issues, needs, options and implementation alternatives which have been identified, evaluated and adopted in an active, public planning process (Lancaster, 1983).

A jurisdiction's capital improvements plan (CIP) projects public expenditures for roads, sewers, water and other support facilities over a number of years. The CIP should be consistent with an adopted community master plan for development. The location of infrastructure plays a vital role in how, where and when a community will develop. The CIP should logically avoid encouraging development in areas which are planned as open space (People for Open Space, 1985).

REGULATIONS

Implementation of local open space plans and/or policies is usually through the adoption and enforcement of zoning and subdivision ordinances or resolutions. Local government exercises its obligation and power to protect the public health, safety and welfare with regulatory devices such as these. Ideally, zoning and subdivision regulations should be consistent with a community's adopted master plan. However, some states, including Colorado, have no statutes which mandate adoption of a master plan.

Open space can be preserved by enacting appropriate zoning ordinances and districts. Zoning can be used to limit development in hazardous and environmentally sensitive areas, preserve scenic views, buffer incompatible uses, protect agriculture from development, and prevent damages caused by development in floodplains and other areas of natural hazards. Traditional zoning ordinances usually include,

for each defined district, a statement of purpose, a list of allowable uses, and development regulations such as setback and density standards.

Exclusive agricultural zones can be effective in preserving open space by limiting development. Agricultural zoning only allows agricultural practices as defined in the ordinance. To be a useful tool, allowable uses must be defined in definite, clear terms. Most agricultural zones determine allowable uses by applying a performance standard such as minimum gross income from agricultural activities on the land. The performance standard should be strict enough to exclude "hobby farms" and ranchettes, typically 5 to 10 acres in size, from the zone to effectively preserve agricultural open space and encourage agricultural practices. Agricultural zoning is usually most successful when it is tied to other programs and policies which manage growth (People for Open Space, 1985).

As with any zoning technique, exclusive agricultural zoning is subject to change due to political and development pressure. However, if these pressures are overcome, agricultural zoning can effectively protect valuable agricultural land from development, create more certainty of future use of lands, minimize residential and farm land use conflicts, be implemented with minimal public expenditures and maintain the open nature of the land.

Large lot zoning districts define minimum lot sizes for development to discourage non-agricultural residential uses. A community which adopts a large lot zone designation must be careful to make the minimum lot size large enough to allow viable agricultural operations. The intent of such districts normally is to prevent suburban sprawl by excluding hobby farms which may be incompatible with open space uses and demand urban services. Unfortunately for rural government, the largest growth experienced in the U.S. since 1980 has been in scattered low density developments, on 5 to 10 acre lots, outside of towns and cities. This scattered growth is a result of peoples' desires to

avoid crowded cities, as well as the change toward a service economy, allowing people and businesses to locate and settle where they please (Herbers, 1987).

Overlay or special purpose zones are another regulatory technique for open space preservation. Overlay zones are applied in addition to the basic zoning designation of a parcel. Overlay zones are usually defined by a physical condition of the land such as a floodplain or high fire hazard area. Typically overlay zones impose stricter limitations on land uses to preserve scenic views, historic sites, or to create buffers between different land uses, e.g. agricultural and residential areas.

Land use zones designated specifically for open space, conservation or recreation purposes may be adopted and applied to identified appropriate areas. Such zoning districts may have any number of names. Commonly used titles include open space, public recreation, conservation, environmentally sensitive, open land, greenbelt and floodplain districts. These districts usually limit allowable uses to specific activities, very low density development and impose strict design and performance standards based on the environmental and aesthetic characteristics of the zone.

Application of traditional zoning regulations may provide a degree of protection for open space. Unfortunately, zoning cannot guarantee permanent preservation. Public officials are often vulnerable to political pressure from special interests and, therefore, may be hesitant to adopt appropriate zoning districts which limit the development of land. The attitude that people should be able to use their land in the manner they desire continues to persist in many rural western areas today.

Once zoning has been adopted and applied to open space areas it must be enforced consistently. Zoning designations are often easily changed through variances or rezones when an owner wants to develop her or his land for a use not allowed in the district. In many economically depressed rural areas public officials have a difficult time

denying requests for development which might be perceived as economic development. Ideally, requests for zoning variances and rezones should not be granted unless the long and short-term effects of the requests on all public and private interests are evaluated and favorably considered in a public forum. Legally, zoning changes must be consistent with the community's goals and objectives as stated in adopted plans and policies.

An alternative to traditional zoning for open space is performance zoning. This technique is becoming increasingly popular and may be particularly suited to rural areas. Performance zoning defines specific standards which development must meet, but does not necessarily define districts for allowable uses. The developer is given flexibility in design to meet the performance standards for a particular development.

Typically performance zoning defines compatible and incompatible uses with the burden on the developer to demonstrate how a development can be made compatible with existing vicinity land uses. Bufferyards between different land uses are commonly used to make new uses compatible. Open space is often used effectively as a bufferyard. Allowable maximum impacts of development are also defined in the performance standards. Impacts such as alteration of floodplains, increased surface runoff, disturbance or removal of vegetation and removal of topsoil are examples of physical impacts normally considered in performance zoning (Kusler, 1980).

Cluster development, in which a relatively small percentage of land in a proposal is developed in high density and the remainder is left in open space, may be used in concert with traditional zoning. Density credits are given to developers who agree to leave natural areas open. This arrangement permits higher density than normally allowed in a zoning district and may avoid the creation of unusable, large lots. Instead, large open areas are left undisturbed. Additionally, cluster development saves both the developer and the public

money through reduced development and service supply costs (Shomon, 1971).

Subdivision regulations adopted by a community may include provisions to protect open space. Governing bodies may attach conditions to subdivision approvals which require development to occur in a manner which preserves open space values in the subdivision. Also, impact fees may be charged to the developer who, unavoidably, destroys open space. Collected impact fees normally must be used to acquire or preserve additional open space elsewhere. Ideally, development standards in subdivision regulations should protect unsuitable lands from development. Areas within floodplains or on steep slopes, for example, may be excluded from development to protect the health and safety of the public as well as to preserve open space. Buffers between proposed subdivisions and incompatible land uses such as agriculture may also be required in the approval process.

Mandatory dedication of open space to the public in subdivisions is a common method of protecting open space. Acceptance of payment-in-lieu of dedication (PIL) may also be required prior to a subdivision approval. Mandatory dedication and PIL provisions have been tested and upheld by the courts as proper and reasonable uses of the police power if direct benefits to the subdivision are demonstrated (Northeastern Illinois Planning Commission, 1982).

A planned unit development (PUD) ordinance normally allows mixed uses in a subdivision or development and variances to normal density and design standards. A PUD is required to designate and maintain private open space owned in common by all landowners in the development.

The amount of open space required for dedication in a subdivision or PUD is normally determined by one of two formulas. Some jurisdictions require a fixed percentage of the undeveloped land to be dedicated as open space. The other formula commonly used is based on the planned density of the development. Density formulas tie the required open space or equivalent payment-in-lieu to the number of

dwelling units, lots, or square footage in floor space to be developed. The more equitable approach is clearly the density formula method.

For mandatory dedications of open space to be effective, governing bodies should require dedications of usable parcels of land consistent with an adopted open space planning program which, ideally, provide linkage between open spaces within and outside of the development. Problems often arise with maintenance responsibilities for dedicated or purchased open space. Many rural governments are not in the position to maintain open space and, therefore, may require a landowners' association to be formed to take on maintenance. Unfortunately, owners' associations have a poor track record and too often dedicated open space is neglected. Other communities may elect to require payments-in-lieu of dedication for all subdivisions and use these funds to supplement an open space program or contribute funds to other public open space projects within their jurisdiction. Delta County, Colorado has chosen the latter option and recently contributed collected PIL funds for the development of a swim beach at the Crawford State Recreational Area. Another approach rural communities might consider is to establish dedicated open spaces as conservation easements to ensure continued maintenance (Northeastern Illinois Planning Commission, 1982).

Adoption of compensable regulations is another form of zoning available to preserve open space. This method combines eminent domain and zoning authorities of local government. Identified parcels of open space are assigned a guaranteed value based on market values of existing land uses at the time the regulations are imposed. Subsequent sales of these zoned parcels at prices less than the guaranteed value of the land require the governing body to compensate the seller for the difference. The compensable regulation approach can be an expensive, complex system to administer and is not widely used (Parker, 1980). However, this technique may be used more often in light of recent U.S. Supreme Court decisions requiring local governments whose

land use regulations may diminish land values to pay just compensation to landowners (First English Evangelical Lutheran church of Glendale v. County of Los Angeles and Nollan v. California Coastal Commission).

Included in fee-simple ownership of land is the right to develop land. These rights may be severed from the land in conservation easements or transferred to other properties. This latter concept is termed transfer of development rights (TDR). TDR is practiced in many areas of the eastern U.S., primarily to protect environmentally sensitive areas and agricultural lands from development, but is not yet common in the western states.

A TDR program involves three components:

1. Identification of areas to be preserved.
2. Identification of areas to receive development rights.
3. A mechanism for identifying types of rights (e.g. residential, or commercial), and for valuing, allocating and transferring the rights.

The program may be attractive to growing rural areas as a supplement to other regulations. Additionally, TDR programs provide a "permanent" restriction on development, encourage high density development away from open spaces, reduce tax liabilities for owners who transfer development rights, but keep the development rights on the tax rolls, while requiring no public expenditures. However, TDR programs can be highly complex for rural areas to administer, and to be effective an adequate market for development rights must exist (DeVoy, 1975).

Contract clustering combines cluster development and TDR concepts. This voluntary arrangement involves a landowner and a local government entering a legal contract which transfers the landowner's development rights on a portion of her or his land to the public in exchange for the right to develop the remainder at an increased density. Typically this method is applied to prime agricultural lands with the intent to keep the land in agriculture. The contract method is well suited to rural areas because it requires minimal public expenditures and extends permanent protection to open land. The land-

owner retains the right to intensively develop her or his land and normally is required to pay property taxes based on the present use of the land (Parker, 1980).

TAX PROGRAMS

Some states have enacted legislation which enables local taxing authorities to provide property tax concessions in efforts to preserve open space. Preferential tax assessment is the most common taxation method used across the U.S. for this purpose. Such programs may create rural, agricultural, or open space zones in which lands are assessed at reduced levels.

In 1956, Maryland became the first state to authorize preferential tax assessments. The Maryland Use Value Assessment Act was designed primarily to preserve agricultural land. A use-value system bases its assessments on the current use of property instead of its potential highest and best use. Colorado adopted legislation similar to Maryland's as an incentive for farmers and ranchers to continue agricultural practices. Unfortunately, preferential tax assessment systems are open to abuse by speculators who may hold property at low cost until a development market exists. Another constraint to this method is as a voluntary system it may encourage leapfrog development to occur. This technique may result in lost property tax revenue and is, at best, a temporary preservation method.

A deferred tax system is a possible solution to the problems with preferential taxation. A deferred program requires a landowner who decides to develop land taxed at current use value to pay the taxing authority the difference between taxes on current use and the proposed use prior to the proposed development being approved. As a voluntary technique, deferred taxation also may encourage leapfrog development and may not be applied consistently, especially if the local tax assessor has the discretion to determine who receives preferential taxation.

Mandatory deferred preferential taxation systems such as California's may meet with more success in preserving open space than voluntary systems. The 1965 Land Conservation Act adopted by California allows counties to designate agricultural preserves which must be chosen to compliment an adopted master plan. Lands proposed for development within the preserves must pay a penalty prior to project approval. The penalty is equal to the deferred taxes plus a fine of one-half the full cash value of the land at its unrestricted use value. The State subsidizes the counties' administration of the program through cash payments.

Generally, preferential and deferred taxation programs have not prevented significant conversion of agricultural and open space lands to other uses (Parker, 1980). In instances where a developer may realize a large profit from development, the burden of back taxes may not be a strong deterrent. Such programs may also result in higher property taxes for non-participating landowners and, therefore, may not be politically popular. Perhaps the most effective use of these taxing devices is when they are tied to other regulatory and acquisition methods. Property owners who are inclined to keep open space in its present use and need the tax breaks to be able to do so are probably the best participants in these tax programs (Parker, 1980).

SUMMARY

Community planning should include identification of key open spaces to be preserved. Master plans normally address several development policy issues which effect potential open space. Adoption of policy or master plans and enforcement of regulatory tools to implement the plans play important roles in local open space programs. A dynamic public participation program may foster community awareness and action and an outdoor ethic.

Traditional zoning and subdivision regulations are the most common means of implementing open space plans. However, alternative regulatory methods of preserving open space continue to be introduced. Performance zoning, transfer of development rights programs, creative

taxing concessions, and contract development agreements are a few examples of newer methods to encourage private landowners to preserve open space. Planning and regulatory techniques are most effective when used in concert with acquisition and management programs tailored to the specific goals, needs, resources and characteristics of a community.

CHAPTER VI.

SUMMARY

{ Each generation must therefore ensure to the next, the inspiration of the outdoors' dignity, power, and elemental freedom; the opportunity to participate in its challenges of discovery and personal involvement; and the fulfillment to be found in its endless opportunities for physical release and spiritual renewal.--President's Commission on American's Outdoors

Protecting open space has been recognized for many years as an important means of maintaining or enhancing the livability of urban areas. In the 1980s as growth pressures in the United States increasingly effect rural environments, the importance of protecting rural open space needs to be emphasized. Open spaces, including wild lands and agricultural areas, are a vital element in defining an area as rural. As our society adjusts to a service and information oriented economy more people and businesses are able to locate away from cities and sources of raw materials needed for a manufacturing economy. People are seeking a higher quality-of-life in their communities and demanding open space and recreational opportunities close to where they live.

want
and
need

The rural west is attempting to recover from the past decade's energy and natural resource development boom and bust cycle. Many rural communities are focusing on attracting tourism in attempts to diversify and strengthen local economies. Fortunately, many western communities are blessed with unique, natural and relatively unspoiled landscapes which are recognized as amenities.

A 1986 survey conducted for the President's Commission on American's Outdoors found that natural beauty and absence of crowds were, respectively, the top two reasons Americans choose a particular area for an outdoor experience. Rural communities should keep this in mind as they plan how and where growth should take place. The planning process should emphasize citizen participation and the recognition of the environmental, social, economic and aesthetic values of

open space, in a variety of policy issues ranging from transportation to housing.

Several regulatory tools are available to local governments for implementing open space plans. The most common regulations adopted locally are zoning and subdivision ordinances which limit development on identified open spaces. Alternative variations of traditional regulatory techniques include performance zoning, transfer of development rights, development agreements and creative taxation concessions.

Planning and regulatory means of controlling open space are vital elements of any local open space program; however, the most effective programs employ a variety of acquisition, finance and management techniques as well. Acquisition of land or interests in land can be accomplished through a variety of techniques. Purchase techniques include condemnation, installment purchase, bargain sale, partial purchase with options, right-of-preemption, tax delinquent land sale, and purchase/resale. Each technique has benefits and constraints associated with it. These methods share the common problem of high costs to local government. Therefore, the best technique for acquiring open space is through donations. Various donation arrangements are possible which provide tax benefits to the donor. Conservation easements, donated in perpetuity to the public, are, perhaps, the most powerful and flexible means of protecting open space without the public holding fee-simple title to land.

As federal assistance for local open space programs continues to diminish, the burden of financing such programs has shifted to the state and local levels. Successful protection of open space at the local level, where public funds and expertise are often limited, requires partnerships between and among private business and individual landowners, civic groups, volunteers, nonprofit land trusts and other conservation organizations, and all levels of government. Partnerships may be initiated by financial necessity, but cooperative grass-roots efforts are part of rural America's heritage and can play an integral role in local open space protection. Community pride and

{ awareness, a sense of accomplishment, good public relations for business, a diversified economy, and a new outdoor ethic may all be fostered through partnerships.

Communities which successfully protect open space, and thus maintain an important element of their rural character, may be able to avoid or lessen the impacts of future natural resource development booms and busts. The key to effective use of the acquisition, management and control techniques addressed in this study is the ability of communities to form partnerships in the dynamic process of planning and managing open space programs for present and future generations.

REFERENCES CITED

- Brooks, Hooper L. 1986. "Open Space Preservation in the 31-County New York Urban Region From 1960 to the 21st Century--A Midpoint Review", Case Studies--President's Commission on Americans Outdoors, Washington, D.C., pp. 1-14.
- Burrows, Lawrence B. 1978. Growth Management. New Brunswick, New Jersey: Center for Urban Policy Research.
- CRS 38-50.5. Colorado Revised Statutes Title 38, Article 50.5, "Conservation Easements": 228-230.
- DeVoy, Robert S. July, 1975. "The Puerto Rico Proposal: Preserving the Environment While Protecting Private Property Rights", Transfer of Development Rights, Chicago: Planning Advisory Service No. 304.
- First English Evangelical Lutheran Church of Glendale v. County of Los Angeles (107 S.Ct. 2378).
- Harris, Larry L. and George F. Hepner. 1983. Open Space and Land Development: A Basic Guide to Management and Preservation of Open Space, Parks, and Recreation Areas in Urban Communities. Western Michigan University: Science for Citizens Center of Southwestern Michigan.
- HCRS. 1977. United States Department of the Interior (Heritage Conservation and Recreation Service). "Land Conservation and Preservation Techniques", Washington, D.C.
- Heckscher, August. 1977. Open Spaces: The Life of American Cities. New York: Harper and Row Publishers.
- Heller, Alfred, ed. 1971. The California Tomorrow Plan. Los Altos, California: William Kaufman, Inc.
- Herbers, John. November, 1987. "Take Me Home Country Roads", Planning, 53, 11:4-8. Chicago: American Planning Association.
- Holiday, Ron G. 1986. "Natural Areas in the West: Part of the Recreational Continuum", Case Studies--President's Commission on Americans Outdoors. Washington, D.C.: pp. 21-26.
- Kusler, Jon A. 1980. Regulating Sensitive Lands. Cambridge, Mass.: Ballinger Publishing Company.
- Lancaster, Roger A. ed. 1983. Recreation, Park and Open Space Standards and Guidelines. Alexandria, Virginia: National Recreation and Park Association.
- Lassey, William R. 1977. Planning in Rural Environments. New York: McGraw Hill.
- Metzger, Philip C. July, 1983. "Public-Private Partners Foster Land Conservation", Conservation Foundation Letter, Washington, D.C.: The Conservation Foundation.
- NASDA Research Foundation, Farmland Project. February, 1986. "Final Rules on Conservation Easements Issued by IRS", Farmland Notes, 5,2:1,3. Washington, D.C.
- Nollan v. California Coastal Commission (107 S.Ct. 3141).

- Northeastern Illinois Planning Commission. January, 1982. Techniques for Acquiring Open Space at Less-Than-Fee: A Guide for Local Officials. Chicago.
- Parker, Bill. 1980. Open Space Planning for Rural, Growth Impacted Colorado Counties. Master's thesis. University of Colorado at Denver.
- Public Law 96-541. Miscellaneous Revenue Act of 1980.
- Parks and Recreation. October, 1987. "NRPA Supports Rails-to-Trails Legislation", 22, 10:8. Washington, D.C.
- People for Open Space. September, 1985. Tools for the Greenbelt: A Citizen's Guide to Protecting Open Space. San Francisco: People for Open Space.
- President's Commission on Americans Outdoors. December, 1986. Report and Recommendations to the President of the United States. Washington, D.C.
- Shomon, Joseph James. 1971. Open Land for Urban America. Acquisition, Safekeeping, and Use. Baltimore: The John Hopkins Press.
- Strafford Regional Planning Commission. April, 1977. "Open Space", Open Space, Chicago: Planning Advisory Service, Open Space No. 2.
- Tindall, Barry S. September, 1987. "PCAO Implications for State and Local Governments", Parks and Recreation, 22,9:45-49. Washington D.C.
- Walker, David V.H. and Martin E. Zeller. November, 1985. "Promoting Public/Private Initiatives for Preservation--Colorado Open Lands", Urban Land, pp. 12-16.
- Williams, Edward A. 1969. Open Space: The Choices Before California. The Urban Metropolitan Open Space Study. San Francisco: Diablo Press.

BIBLIOGRAPHY

- Atteberry, William L., Karl G. Pearson, and Michael P. Litka. 1978. Real Estate Law. Columbus, Ohio: Grid Incorporated.
- Bugbee, Bruce A. and John B. Wright. Undated. "Conservation Easements: Protection for Critical Winter Range", Xerox copy supplied by authors.
- Colorado Division of Wildlife. Winter, 1986. News for Landowners, 4,2. Denver: Colorado Division of Wildlife.
- Corbett, Marjorie R. ed. 1983. Greenline Parks: Land Conservation Trends for the Eighties and Beyond. Washington, D.C.: National Park and Conservation Association.
- Derda, Paul. May-June, 1982. "Using Open Space Areas to Control Urban Sprawl", Colorado Municipalities, 58, 3:28-24. Denver: Colorado Municipal League.
- Getzels, Judith and Charles Thurow, eds. 1979. Rural and Small Town Planning. Chicago: Planner's Press.
- Grand Junction City Council and Mesa County Board of County Commissioners. 1979. Parks and Recreation Facilities Master Plan: Grand Junction and Greater Mesa County. Grand Junction, Colorado: Colorado West Recreation Systems, Inc.
- McHarg, Ian L. 1971. Design With Nature. Philadelphia: Eugene Feldman, The Falcon Press.
- Mesa County Parks Department. October, 1983. Grand Valley Metropolitan Region Comprehensive Public Parks Study. Grand Junction, Colorado: Mesa County Parks Department.
- Mesa County Planning Commission. 1986. Mesa County, Colorado Land Use and Development Policies. by the Planning Commission.
- Office of Community Development Programs, Mesa College. May, 1983. Grand Valley Metropolitan Region Recreation Center Study. Grand Junction, Colorado by Mesa College.
- Southeast Michigan Council of Governments. June, 1981. Conservation Easements: Tax Incentives for Private Open Space Preservation. Technical Bulletin No. 6. Detroit, Michigan by the Council.
- Thurow, Charles, William Toner, and Duncan Erley. July, 1977. "Performance Controls for Sensitive Lands". PAS Report, nos. 307, 308, ASPO, pp. 88-91, 95-102. Chicago: American Planning Association.